

Notice of Allowability

Application No.

10/038,972

Applicant(s)

BARTLETT, JEFFREY S.

Examiner

Maria B. Marvich, PhD

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to an amendment 3/14/05.
2. ☒ The allowed claim(s) is/are 1-10, 17, 18, 21-23, 25-29, 36, 37, 42-44 (now claims 1-25).
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date 5/05.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.


TERRY MCKELVEY
PRIMARY EXAMINER

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DETAILED ACTION

This office action is in response to an amendment filed 3/14/05. Claims 11-16, 19-20, 24 and 41 have been canceled. Claims 1-15, 17, 18, 21, 22 and 23 have been amendment. Claims 1-10, 17, 18, 21-23, 25-40 and 42-44 are pending.

Interview Summary

Claims 27-40 have been previously withdrawn. Claims 27-29, 36 and 37 have been rejoined with the instantly elected claims. Applicants have agreed not to rejoin claims 30-35 to avoid potential rejections under 35 USC 112, first paragraph. Therefore, claims 30-35 and 38-40 are withdrawn and claims 1-10, 17, 18, 21-23, 25-29, 36, 37 and 42-44 are under examination in this office action.

An amendment to claims 1 and 4 was proposed to indicate that the term “at a position” corresponds to an insertion of a peptide following the recited amino acids. Insertion prior to the recited amino acids should “at” indicate that the amino acid is substituted, would read on AAV2 vectors of the prior art. Applicants have argued that the specification teaches that the peptide can be substituted or inserted and in the recited claims, the peptide is an insertion not a substitution and is inserted after and not before the recited amino acids as supported on page 4, line 6-8, page 12, line 18-19 page 18, line 4-9, page 21, 18-21, page 27, line 20-24)

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR

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1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Sharon Sintich on May 25, 2005.

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
The signature of Jeffrey Bartlett has not been dated.

The application has been amended as follows:

Claim 25 (amended) A polynucleotide encoding ~~the an AAV2~~ capsid protein ~~of claim 1,~~
~~2, 3, 4, 5, 6, 7 or 8~~ with a peptide insertion at a position selected from the group consisting of:
position 139 in the VP1 capsid (SEQ ID NO:13), position 161 in the VP1 capsid (SEQ ID
NO:13), position 459 in the VP1 capsid (SEQ ID NO:13), position 584 in the VP1 capsid (SEQ
ID NO:13), position 588 in the VP1 capsid (SEQ ID NO:13) and position 657 in the VP1 capsid
(SEQ ID NO:13).

Claims 30-35 (canceled).

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In claim 36, line 2, the phrase "any one of claims 21 through 23" following "AAV2 vector of" has been deleted and --claim 17-- has been inserted.

Claims 39-40 (canceled).

Conclusion

Claims 1-10, 17, 18, 21-23, 25-29, 36, 37 and 42-44 (now claims 1-25) are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria B. Marvich, PhD whose telephone number is (571)-272-0774. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel, PhD can be reached on (571)-272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR)-system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Maria B Marvich, PhD
Examiner
Art Unit 1636

May 25, 2005


TERRY MCKELVEY
PRIMARY EXAMINER